IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4827 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNAGAR UNIVERSITY KARMACHARI PARIVAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4827 of 1990

MR MD RANA for Petitioner.

Mr. MA Bukhari AGP for Respondent No. 1

MR Mazgaonkar, for Respondent No. 2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 06/02/2003

ORAL JUDGEMENT

This petition has been filed by Bhavnagar University Karmachari Parivar through its President and Joint Secretary and has prayed for quashing and setting aside the part of GR dated 12.5.89 insofar as it excludes old campus employees from the benefit of campus allowance and also it confines the payment of campus allowance for a period of 5 years from 1.4.89. The petitioner has also

prayed for mandatory directions to the State Government and the Bhavnagar University to pay campus allowance to non-teaching employees of Bhavnagar University with effect from 1-10-1978. It is the case of the petitioner that the Bhavnagar University has been set-up by the State of Gujarat as per the Bhavnagar University Act, 1978. Section 1 of the said Act has come into force from 18.4.78 and some of the provisions thereof were brought into force by the Government with effect from 1-6-78 and rest of the provisions including provisions regarding absorption of the staff of the Saurashtra University were brought into force with effect from 24.5.79.

2. It was stated by the petitioner that prior to the enactment of the Bhavnagar University Act, the area comprising the present area of Bhavnagar University formed part of University area of Saurashtra University established as per Saurashtra University Act, 1965. The Colleges at present run by the Bhavnagar University were immediately before the establishment of another university run by the Saurashtra University. It was further stated that prior to the establishment of the Bhavnagar University, the non-teaching staff at present under the employment of Bhavnagar University were part of the establishment of the Saurashtra University and the said staff came to be absorbed in the establishment of the Bhavnagar University by virtue of the operation of Section 70 of the Bhavnagar University Act, 1978. On the basis of the provisions contained in Sec. 70 of the said Act it was contended by the petitioner that the absorption of the staff was on the basis of the same terms and conditions of service as were applicable to them immediately before the date of their absorption by Bhavnagar University.

3. It was further stated by the petitioner that the members of non-teaching staff employed in the Saurashtra University and working at the campus thereafter were paid campus allowance at the prescribed rates. The Saurashtra University was also maintaining the campus at Bhavnagar prior to the establishment of the Bhavnagar University and the university staff employed and working at Bhavnagar campus were also entitled to the payment of campus allowance at the prescribed rate. It was further stated that the staff working at the Bhavnagar campus were being paid campus allowance upto September 1978. However, on 22.9.78, the Vice Chancellor of Saurashtra University decided to discontinue payment of campus allowance to employees working at the Bhavnagar campus. The said payment was discontinued with effect from 1.10.78 and the decision of the Vice-Chancellor was

ratified by the Syndicate of the Saurashtra University by its Resolution dated 14.10.78. The employees working at the Bhavnagar campus protested against the discontinuance of the campus allowance and made several representations before the University as well as the State Government. However, no decision was taken by the Government till May 1989. The petitioner has further submitted that on 12th May 1989 the State Government issued a GR granting sanction for payment of campus allowance to the employees of Bhavnagar University at Rs. 75/= per month with effect from 1-4-89 for a period of 5 years. The benefit conferred by the said G.R. was confined to the employees working at the new campus only and it has specifically excluded non-teaching employees working at the old campus of the University. It was further stated that the payment of campus allowance to non-teaching employees of the Saurashtra University came to be dealt with by the State Second Pay Commission which has recommended the continuation thereof. The State Government had accepted the said recommendation, vide its GR dated 23.6.76. It was further submitted that the said recommendation did not contemplate any distinction between the employees of the Saurashtra University working at Rajkot and those working at Bhavnagar. The petitioner therefore challenged the GR dated 12.5.89 before this Court in the present petition by raising the contention that employees working at Bhavnagar are entitled to the continuation of the payment of the campus allowance and that by virtue of the operation of Section 70 of the Bhavnagar University Act, the employees working at Bhavnagar were entitled to continuation of the payment of the campus allowance even after the setting up of the Bhavnagar University. It was further submitted that the campus allowance was paid to Saurashtra University employees whose services remained with the said University even after the setting up of the Bhavnagar University and hence there was no rational behind the said discriminatory treatment which was unjust and selectively hostile according to the petitioner. It was further submitted that the said GR is also illegal in so far as it purported to confine the payment of campus allowance to campus employees for a period of 5 years from 1.4.89 and since there was no such stipulation applicable to those Saurashtra University employees whose services were retained with the Saurashtra University and not transferred to Bhavnagar University.

4. The petitioner has further raised the contention that the provision of GR, insofar as it excludes from the benefit of campus allowance, the employees working at the old campus of the Bhavnagar University, is also illegal and unlawful as the old campus as well as new campus are

all part of the same establishment and the employees working in the establishment are transferable from one campus to another. There was no separate cadre of old campus employees as distinguished from the benefit of old campus employees. Such a distinction imposed by the GR, therefore, clearly violates the fundamental rights of the petitioner as enshrined in Articles 14 and 16 of the Constitution of India. It is in this background that the petitioner has prayed for the payment of campus allowance applicable to all campus employees also and to delete the Reference to the limit of 5 years for the payment of campus allowance to the employees of the Bhavnagar University.

5. Upon notice being served on the respondent, an appearance was filed on behalf of the respondent. The respondent No.2 has filed his affidavit wherein it is stated that earlier this Court had an occasion to deal with the issue raised in Special Civil Application No.1473/77 wherein this Court had directed to extend to the non-teaching class III and IV employees of three colleges the benefits of conveyance allowance and leave encashment on the lines on which the said benefits were being extended to other members of the Class III and Class IV services of those universities. The respondents were further directed to evolve a policy within three months from the date of the said judgment so as to give the benefit from the date when the petitioners came on the Saurashtra University cadre in the year 1970 and it was also directed to maintain equal status and equal terms and conditions of service as were applicable to the Saurashtra University employees, to the Bhavnagar University employees of the same class. It was therefore stated in the affidavit that the orders passed by the Court have been implemented by the Bhavnagar University in respect of its employees from Saurashtra University who have been transferred to the Bhavnagar University. It was further stated that with effect from 1st October 1978 payment of conveyance allowance was stopped since the campus of the Bhavnagar University was within the city of Bhavnagar. It was also stated in the affidavit-in-reply that the Executive Council of the Bhavnagar University, by Resolution dated 30th June 1983 had recommended to the Government that conveyance allowance be paid to the employees of the University. The State Government, however, did not accede to this request of the Executive Council of the Bhavnagar University and after discussion with the then Education Minister it was stated that the employees should make demands before the Pay Commission. However, the said demand was not accepted by the Pay Commission for payment

of conveyance allowance. It was further stated that the State Government passed the Resolution for payment of conveyance allowance for a period of 5 years as the new campus of the University was away from the Bhavnagar University and it was specifically stated therein that those employees who were serving in the old campus were not entitled to the benefit thereof. The respondent No.2 has further stated that the University was not in a position to accede to the demand of the petitioner as all the financial commitments were to be approved by the State Government.

6. Earlier, this petition came to be heard by this Court {Coram: S.K. Keshote, J.} on 28.10.1997 and the same was disposed of directing the petitioner to make representation in respect of the grievance made in the petition to the respondent No.1 State within a period of one month from the date of the receipt of the said order and in case such representation was made, the respondent No.1 was directed to decide the said representation within a period of 3 months. It was further made clear that in case the claim of the petitioner was accepted, the members of the petitioner shall be made payment accordingly by the respondents and if the claim of the petitioner was not accepted then a reasoned order shall be passed and copy of the same shall be sent to the petitioner. The liberty was granted to the petitioner to revive the petition in case of difficulty. Pursuant to the aforesaid order, a representation was made by the petitioner before the State Government on 5.6.1998, however the same was not decided and hence contempt application was filed by the petitioner and in that contempt application, the Division Bench of this Court had directed the State Government by order dated 10th February 1999 to decide the representation within the specified time. It was ultimately decided against the petitioner on 6th April 1999. The petitioner, thereafter, moved Civil Application No. 12997/99 in Special Civil Application No. 4827/90 for quashing and setting aside the order passed by the State Government on 6th April 1989 and for revival of the petition. The petitioner had also moved Misc. Civil Application No. 2435/99 for revival of the petition. After revival of the petition, this Court has granted permission to the petitioner for carrying out necessary amendments in the petition. Accordingly, the petition was revived and amendments were also made in the petition challenging the orders passed by the State Government on 6th April 1989 on the representation made by the petitioner. It was stated that in the said order the factors which were taken into consideration by the authority were quite

irrelevant and they have been decided ignoring the judgment rendered by this Court. It was submitted that the distance of 4 Kms. was very much in the mind of the Court and therefore the Court had to come to a finding that the division made by the State Government is arbitrary and without any rational basis.

7. Heard Mr. MD Rana, ld. advocate appearing for the petitioner. He has raised three broad contentions before this Court. Firstly, he has submitted that the respondent No.1 has not sought any approval of the State Government for changing the service conditions of the petitioner. The petitioner was originally entitled to the campus allowance, however, by virtue of G.R. dated 12.5.89 the same was restricted to for the period of 5 years and old campus employees were excluded from the said benefit. It would amount to the change in service conditions and without approval of the State Government as contemplated in Sec. 70 of the Act, such a change cannot be effected. Mr. Rana has further submitted that the State Government has made an artificial division between the employees of the old campus and the new campus and this is nothing but an arbitrary action of the State Government. It cannot be said to be a reasonable classification so as to justify the test laid down while considering the provisions contained in Articles 14 and 16 of the Constitution. He has further submitted that the employees of the Bhavnagar University were wrongfully discriminated and benefit of campus allowance was denied to them, whereas the said benefit is given to the employees of the Saurashtra University. Mr. Rana has further relied on the decision of this Court in Special Civil Application No. 5262 of 1986 decided on 24.2.84, wherein it is held that if class II and III employees of Bhavnagar University were entitled to this allowance as long as they were working in Saurashtra University, and they would have continued to get the same if they had continued to work with the Saurashtra University, there is no reason why this benefit should be denied to the employees of Bhavnagar University. Bhavnagar University is nothing else but a successor of the Saurashtra University for the area for which it is constituted. The benefit of conveyance allowance or for that matter any other benefit or allowance cannot be taken away merely on the ground of formation of another university. This Court has, therefore, directed that if the conveyance allowance was and is being paid to the members of the teaching staff of the Saurashtra University, the same benefit on the terms and conditions as set out for class III & IV employees be paid to the members of the non-teaching staff as a whole. On the basis of this

judgment, Mr. Rana has submitted that there was no justification in restricting the claim of the petitioner with regard to campus allowance for a period of 5 years and also there was no justification in denying the said benefit to the employees of the old campus.

8. Mr. Bukhari, the learned AGP, appearing for the respondent No.1, State of Gujarat, on the other hand, relied on the order dated 6th April 1999 passed by the State Government and submitted that in no manner the said order can be treated as arbitrary or discriminatory. Mr. Mazgaonkar, ld. advocate appearing for respondent No.2 Bhavnagar University has relied on the affidavit filed by respondent No.2 and submitted that the claim made by the petitioner is not sustainable in view of the decision taken by the State Government. Mr. Bukhari has further submitted that as per the directions given by this Court the State Government considered the representation made by the petitioner and after considering all the aspects of the matter as well as the entire facts and circumstances of the case, the State Government acting through Deputy Secretary, Education Department, Gandhinagar, has observed in the order dated 6.4.1999 that on 13-4-1999 a meeting was held between the ex-Education Minister and the Gujarat University Non-Teaching Staff Association and decision was taken on several demands raised by the Association, which inter alia, included the demand regarding campus allowance to be given to the non-teaching staff of the Bhavnagar University and on the basis of the said decision, the Education Department had issued the impugned Resolution dated 12.5.1989. It was further stated in the said order dated 6.4.99 that despite there being several adverse circumstances, the State Government has accepted the demand of the non-teaching staff with regard to campus allowance. It was noted in the said order that Bhavnagar University was started in old campus of library building as its administrative building was constructed in the year 1984 and thereafter office of the University was shifted. Though there is distance of about 4 Kms. between these two buildings, both are situated within the local limits of Bhavnagar Municipal Corporation. It was stated in the said order that when the recommendation made by the 2nd Pay Commission was accepted by the State Government, there was no division between Saurashtra University and Bhavnagar University. At that time, the headquarters of the Bhavnagar University was situated at the campus of Saurashtra University outside the Rajkot Municipal Corporation limits, the demand for campus allowance was made by the non-teaching staff of the Saurashtra University and the said demand was accepted by

the 2nd Pay Commission. It was specifically recommended that those employees who were not staying in the campus only would be entitled to campus allowance. Thereafter, when the headquarter of Bhavnagar University was shifted to Bhavnagar on 24-4-79 and since the same was within the Corporation limits, the employees staying at the campus were not entitled to campus allowance and yet the demand was satisfied looking to the fact that new campus was 4 Kms. away from the old campus. It was further stated that as per the provisions contained in Section 70 of the Bhavnagar University Act, 1978, the State Government is empowered to modify the terms and conditions of the services of the employees of Bhavnagar University. Accordingly, by passing the Resolution dated 12.5.89, it was decided to give campus allowance to the non-teaching staff working at new campus. Considering this background, Mr. Bukhari, has submitted that it cannot be said that the decision taken by the State Government vide its Resolution dated 12.5.89 is in any way arbitrary, unlawful or discriminatory which warrants any interference by this Court while exercising its writ jurisdiction under Art. 226 of the Constitution of India. He has further submitted that earlier two decisions of this Court referred to and relied upon by the petitioner are not applicable to the facts of the present case as had it been the situation this Court would not have directed the petitioner to make representation before the State Government. Now, when the representation made by the petitioner has already been considered by the State Government and a detailed speaking order is passed on the said recommendation, it is not open for the petitioner to challenge the same before this Court by reviving the earlier petition. He has, therefore, submitted to reject the petition filed by the petitioner.

9. I have heard Mr. MD Rana, ld. advocate appearing for the petitioner, Mr. Mazgaonkar, ld. advocate appearing for respondent No.2 University, and Mr. Bukhari, ld. AGP appearing for respondent No.1. I have also gone through the petition as well as the documents attached therewith. The affidavit filed on behalf of the respondent No.2 has also been perused by me. The order passed by respondent No.1, pursuant to the direction of this Court given in an earlier order dated 28.10.97, is also considered by me. While going through the order dated 6th April 1999 passed on the representation made by the petitioner to the State Government, I found that the factors which have been taken into consideration by the State Government are quite irrelevant and the two judgments of this Court

rendered on the subject have not been taken into consideration. The factors, such as the corporation limits and the facilities available to the employees from the Bhavnagar Municipal Corporation were already taken into consideration by this Court while rendering the earlier two judgments. The distance of 4 Kms. was very much in the mind of the Court and therefore the division which is sought to be made in the order is without any rational basis. There is no reasonable nexus between the distinction sought to be made and the objects to be achieved. Some of the employees are in fact getting such benefits even though the university campus is situated within the radius of 4 Kms. of the corporation limits. The State Government is the common paymaster in respect of the university situated in different parts of the State and yet the grant is being made available to such universities for the purpose of making payment of campus allowance to its employees despite the fact that such universities situate within the periphery of 4 Kms. of the municipal limits. The employees cannot be and should not be discriminated in the matter of grant of campus allowance and from the order dated 6th April 1999 it appears that the authority has not applied its mind to the judgment delivered by this Court which clearly clinches the whole issue and it is not open for the authority to ignore the said judgment. This Court in its Judgment dated 24-2-94 in Special Civil Application No. 5262 of 1986 in unequivocal terms held that the respondents shall pay conveyance allowance to the members of the Union, both Class III & IV and shall do so from the date they have been denied on formation of Bhavnagar University. It was further held that if conveyance allowance was and is being paid to the members of the teaching staff of the Saurashtra University, the same benefit on the terms and conditions so set out for Class III & IV employees be paid to the members of the non-teaching staff as well. This Court is, therefore, of the view that the GR dated 12th May 1989 is illegal and unlawful in so far as the same has confined the payment of campus allowance to Bhavnagar University employees only for a period of 5 years with effect from 1-4-89, as there was no such stipulation applicable to the employees of the Saurashtra University whose services were retained with the Saurashtra University and not transferred to Bhavnagar University. The said GR cannot also be held to be valid in so far as the same excludes from the benefit of campus allowance, the employees working at the old campus of Bhavnagar University as the old campus and the new campus are all part of the same establishment and their services are intertransferable from one campus to another campus. This discrimination is, therefore,

clearly in violation of the provisions contained in Articles 14 and 16 of the Constitution of India.

10. In view of the above discussion and in view of the two earlier judgments of this Court, the present petition is allowed and the respondents are, therefore, directed to pay the campus allowance to the petitioner as prayed for in this petition. With regard to the payment of arrears, this Court adheres to the directions given in Special Civil Application No. 5262 of 1986 and direct the respondent authorities to make the payment of the arrears at the rate prevalent on the date the campus allowance was stopped and thereafter whatever be the upper revision of the allowance, it shall be paid in accordance with the rate which is in force from time to time. The arrears shall be cleared as expeditiously as possible and in any case within a period of 6 months from the receipt of certified copy of this order or from the date of the receipt of the writ of this Court, whichever is earlier. The respondents are given liberty to approach this Court if they find any difficulty in working out the payment-schedule to the petitioner.

11. With the above observations and directions, the petition is accordingly disposed of. Rule is made absolute with no order as to costs.

rmr. [K.A. Puj, J.]